

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRIGHT BANNERS, INC.	: NO. 17-1724
Plaintiff,	:
	:
vs.	: CIVIL ACTION
	:
JOSEPH C. FIGURED, JR.,	: <i>Five</i>
Defendant.	: <i>Preliminary Objections</i>

**ORDER**

AND NOW, after the February 8<sup>th</sup> hearing was held on *Plaintiff's Preliminary Objections to Defendant's Amended Counterclaim*, the Court finds the following:

1. *Preliminary Objection One, Two, and Three* are **SUSTAINED**. Defendant conceded that he alleged insufficient facts to prove a claim for the breach of a fiduciary duty as expressed by this Court in its October 22, 2018 opinion on Plaintiff's first set of preliminary objections.<sup>1</sup> Therefore, Defendant's "Count II - Breach of Fiduciary Duty" is stricken from his *Amended Counterclaim/Affirmative Defenses of Defendant Joseph C. Figured, Jr.* ("Amended Counterclaim"), which was filed on November 14, 2018.
2. *Preliminary Objection Four* is **SUSTAINED**. Defendant has conceded that "Comparative Negligence" should not have been pled as a cause of action. Therefore Defendant's "Count IV – Comparative Negligence" is stricken from his Amended Counterclaim.<sup>2</sup>

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<sup>1</sup> See *Banners, Inc. v. Figured*, No. 17-1724, Order: Preliminary Objections (Lyco. Com. Pl. Oct. 22, 2018) (" 'A landlord/tenant relationship does not create any special duty of good faith or fiduciary duty.' " (internal citations omitted)).

<sup>2</sup> The Court is not striking comparative negligence as a possible affirmative defense. See Pa.R.C.P. No. 1030(b) ("The affirmative defenses of assumption of the risk, comparative negligence and contributory negligence need not be pleaded.").

3. *Preliminary Objection Five* is **OVERRULED**. Plaintiff requests that it receive attorney's fees based on this Court's clear October 22<sup>nd</sup> directives and Defendant's lackluster amendments to his counterclaim. The Court finds that Defendant's conduct does not rise to the level of "dilatory, obdurate or vexatious conduct."<sup>3</sup> Therefore, sanctions are not appropriate.

**IT IS SO ORDERED this 12<sup>th</sup> day of February 2019.**

BY THE COURT,

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Eric R. Linhardt, J.

ERL/zs

cc: Matthew James Marcello, Esq.  
*Marcello Law Office*  
*347 S. Bouquet St.*  
*P.O. Box 19815*  
*Pittsburgh, PA 15213*  
Ryan C. Gardner, Esq.  
Gary Weber, Esq. (Lycoming Reporter)

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<sup>3</sup> 42 Pa.C.S. § 2503(7).